

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**TRINITAS REGIONAL MEDICAL
CENTER,**

Employer
and

**INTERNATIONAL ASSOCIATION
OF EMTS AND PARAMEDICS,
SEIU, LOCAL 5000,**

Petitioner

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CASE NO. 22-RC-193804

**EMPLOYER'S OPPOSITION TO PETITIONER'S
REQUEST FOR REVIEW**

Pursuant to Section 102.67(f) of the Rules and Regulations of the National Labor Relations Board ("the Board" or "NLRB"), Trinitas Regional Medical Center (the "Employer," "the Hospital," or "Trinitas") submits this Opposition to the Petitioner's Request for Review of the Regional Director's April 25, 2017 Decision and Order ("RD Decision") in the above captioned matter, which dismissed the petition filed by the International Association of EMTs and Paramedics, SEIU, Local 5000 (the "Petitioner," the "Union" or "Local 5000"). The Decision and Order was consistent with Board's acute-care hospital bargaining unit rules and was amply supported by the record evidence as well as established Board law. The Union failed to establish any of the grounds mandated by the Board's Rules and Regulations for a grant of review.

A. The Petition, the Hearing, and the Regional Director's Decision.

Local 5000 filed a petition seeking to represent certain employees within one department of the Hospital, the Pre-Hospital Services Department (“the Department”). Specifically, the unit sought by Petitioner was

All full time, part time and per diem Mobile Intensive Care Paramedics (MICP), Mobile Intensive Care Nurses (MICN), and Specialty Care Transport Nurses (SCTN) whom provide Pre-Hospital Advanced Life Support (ALS) Mobile Intensive Care Unit (MICU) and Specialty Care Transport Unit. (SCTU).

The Union sought to exclude

Managers, Coordinators, Educators and all others not providing Pre-Hospital Advanced Life Support, MICU Services or having the title of MICN, MICP or SCTU Nurse.

Petititon (Bd. Ex. 1, Decision at 1-2).¹ Thus, the unit sought paramedics and registered nurses employed in that one department. The parties stipulated that paramedics are technical employees within the meaning of the National Labor Relations Act. Tr. at 15; Decision at 6, 12. The Pre-Hospital Services Department also includes Emergency Medical Technicians (“EMTs”). The parties stipulated that the EMTs are likewise technical employees under the Act. *Id.*

Although the EMTs were not sought by the Petitioner, at the hearing, the Union agreed that it would proceed to an election in a unit including Emergency Medical Technicians (“EMTs”) if the Regional Director found such inclusion in the unit appropriate. Tr. at 203,

¹ Throughout this Employer's Opposition, references to the Employer's hearing exhibits are designated “E. Ex. ___”; the Board exhibit is “Bd. Ex. 1”; and references to Petitioner's exhibits are designated “P. Ex. ___”. References to the hearing transcript are designated “Tr. at ___”. References to the Decision and Order “Decision at ___.” References to the Petitioner's Request for Review are designated as “U. Req. at ___”.

Decision at 3.² Thus, Local 5000 sought to carve out from the Hospital a unit consisting of one department.

At the hearing, the parties stipulated that Trinitas is an acute care hospital. Tr. at 15. The Regional Director likewise found so based on the record. Decision at 6. Most significantly, the state of New Jersey licenses Trinitas as an acute care facility, which classification is also a predicate for the state's licensing of the mobile care unit at issue. E. Exs. 2, 40, 41, Tr. at 76.

As found by the Regional Director and stipulated by the parties, all employees in the Pre-Hospital Services Department are either technical employees (paramedics and EMTs) or registered nurses (RNs).

The Employer asserted a straightforward argument. Trinitas is an acute care hospital. Under the long-established Board rule regarding bargaining units in an acute care hospital, the only appropriate unit would be wall-to-wall units of all technical employees and all registered nurses, or if desired by the Petitioner, a combination of such units.³ As required by the Board's Rules, Trinitas provided a Statement of Position which listed all individuals within the unit sought by Local 5000 and in the unit which would be appropriate under §103.30. Bd. Ex. 1.

² The Union also stated it would proceed to an election if the unit was found to include the employee working as a dispatcher. The dispatcher also works as an EMT. Tr. at 16, 129, 203.

³ Under NLRB Rule §103.30 ("Appropriate bargaining units in the health care industry"), "[e]xcept in extraordinary circumstances ... the following shall be appropriate units, and the only appropriate units ... except that, if sought by labor organizations, various combinations of units may also be appropriate:

- (1) All registered nurses.
- (2) All physicians.
- (3) All professionals except for registered nurses and physicians.
- (4) All technical employees.
- (5) All skilled maintenance employees.
- (6) All business office clerical employees.
- (7) All guards.
- (8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

There are approximately 60 employees in the unit sought by the Union (including EMTs). *Id.*
There are over 1,000 additional employees working at Trinitas as technical employees or registered nurses. *Id.*

The Union's contention is that Trinitas' Pre-Hospital Services Department operates as a separate entity distinct from the acute care facility. This, as the Regional Director properly noted, would be the only way to avoid application of the Board's acute care unit rule. Decision at 4. The evidence adduced at the hearing overwhelmingly supported the Regional Director's conclusion that the Pre-Hospital Services Department is inseparable from Trinitas' acute care hospital facilities. Decision at 12.

B. The Union Failed to Establish any of the Requisite Grounds for Review.

Under the Rules and Regulations of the National Labor Relations Board, a request for review can only be granted if a party can establish one of the grounds enumerated in the pertinent Rule.

Specifically, the Rule states:

- (d) *Grounds for review.* The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:
 - (1) That a substantial question of law or policy is raised because of:
 - (i) The absence of; or
 - (ii) A departure from, officially reported Board precedent.
 - (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

- (3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

Rules and Regulations, §102.67(d). In the case at bar, Petitioner did not articulate any basis for satisfying the standards for review of the Regional Director's decision. Nonetheless, taking Local 5000's Request for Review in its best light, it will be assumed the Petitioner contends the finding that the Pre-Hospital Services Department is inseparable from the hospital as a whole was "clearly erroneous on the record." However, the opposite is true.

C. The Record Demonstrates that the Pre-Hospital Services Department Is an Integral Component of the Hospital.

Trinitas operates a hospital on two main campuses in Elizabeth, New Jersey. The main campus is located at and around 225 Williamson Street. On the adjacent block are the Employer's Human Resources Department and the Center of Regional Education ("CORE") building. The CORE building houses Trinitas fundraising foundation and all its Pre-Hospital Services Department. E. Ex 3, Tr. at 23; Decision at 4.⁴

The Regional Director found that the Pre-Hospital Services Department is an integral part of the Employer's operation. Not only is it specifically licensed *by* Trinitas as a function of the

⁴ The record contains comprehensive evidence of the existence of a community of interest between the Pre-Hospital Services Department and the employees in all other Trinitas departments: all employees share the same benefits, work rules, and HR policies, have a high degree of similarity in patient care functions and in equipment utilized. The Regional Director stated that he would only need to rely on these community of interest factors to make a unit determination if the Pre-Hospital Services Department "was somehow removed" from the Hospital. Decision at 5. Insofar as the petitioned-for department is part of the Hospital, Board Rule 103.30 controls. *Id.*

Hospital, but state law mandates that such mobile units can *only* be licensed to acute care hospitals. Tr. at 76, E. Exs. 40-41.⁵

The Pre-Hospital Services Department is an interrelated component of Trinitas' patient care. It is fully integrated into the business of the Hospital. The Employer's organization chart identifies the Department as part of Trinitas' Community & Clinical Services department along with renal services, emergency preparedness, community outreach, construction facilities management, environmental services, and food service. E. Ex. 5. Senior Director Joseph McTernan manages all of these functions, including those of the employees at issue. *Id.*

The Community & Clinical Services division is itself part of the Clinical Operations & Physician Services division of the Hospital, which includes ambulatory surgery, the cancer center, physical medicine & rehabilitation, respiratory therapy, pharmacy, the laboratory, radiology, and much more. E. Ex. 5. Nancy DiLegro, Ph.D. is the Vice-President in charge of this division. *Id.*

As such, Gerard Muench, the Director of Pre-Hospital Services, reports directly to Mr. McTernan and to Dr. DiLegro. Mr. Muench serves on various Hospital-wide committees along with management staff from throughout the Hospital which establish Trinitas' policies in a variety of disciplines.⁶ Decision at 11.

Like other departments, the Pre-Hospital Services Department has a medical director, Raffee Matossian. Tr. at 70, Decision at 6. Dr. Matossian also works in the Hospital's Emergency Department and performs quality assurance for Trinitas. *Id.*

⁵ See, New Jersey Code Section 26:2K-12(a).

⁶ These committees include environmental care, stroke committee, STEMI committee, EMS/ER committee, emergency preparedness committee, Elizabeth area emergency preparedness group, employee injury committee, leadership council, and the survey preparedness committee. Tr. at 89-97.

There was detailed testimony regarding the functional integration of the employees in the putative unit and those in the other Hospital buildings. The primary service provided by the Pre-Hospital Services Department (besides emergency medical care) is transportation, including emergency and non-emergent transportation. Decision at 7. Department employees transport patients to, from, and between Trinitas facilities. It is uncontroverted that the “vast majority” of transportation provided by Pre-Hospital employees are either from, to, or between Trinitas facilities – over 90% for some types of transport. Tr. at 105, 128, 148; Decision at 7.

There was also ample testimony as to the integration of Department employees with other departments’ employees, particularly in the emergency room. Whether bringing in a patient or transporting one out, the Hospital has a defined program of transferring control of care either to, or from, Pre-Hospital Services employees. Tr. at 113, 115; Decision at 8. When awaiting a transfer to the care of emergency room nurses, Department employees will provide needed care to the patient just as the emergency room staff would. *Id.*

Director Muench testified as to the importance of the Department’s function to Trinitas as a whole. When asked to describe the business of the Hospital without the services of the EMTs and paramedics, he said

That would cripple the hospital as far as there would be no way to discharge patients. There would be no way to get patients to their care for wound care, dialysis, psych treatment. There would be no way to get patients between campuses. And the MICU would not be functioning. And there would be no paramedic units covering the City of Elizabeth.... The emergency department would be unable to get any patients out to be discharged or admitted to the other campus, so they would be backed up and it would slow down care.

Tr. 192-193.

Particularly compelling is the fact that all services performed by the Pre-Hospital Services Department are billed by the Employer as *Trinitas* charges, not Pre-Hospital charges. Tr. at 107, 120, 128; Decision at 7. These services are charged as combined bills including Pre-Hospital services and those of the other Trinitas departments. Tr. at 102, Decision at 7. The Hospital holds itself out to the public as a single, integrated entity.

D. The Petitioner Failed to Show the Pre-Hospital Services Department Is a Separate Entity.

Faced with the overwhelming evidence that the Department does not exist on its own, separate from the Hospital, the Petitioner argued that it is “administratively, and only administratively... part of Trinitas.” U. Req. at 2. However, the Union offered virtually no evidence to substantiate this claim.

Local 5000 argued that certain employees (paramedics) within the Pre-Hospital Services Department are not dispatched to sites by Hospital staff, but by the Union County dispatch pursuant to its 911 system. U. Req. at 2.⁷ However, the uncontroverted evidence established that this arrangement *is by contract between Trinitas and the municipality*. Tr. 111-112. These emergency calls are billed by Trinitas, as Trinitas charges. Tr. 107.

The Petitioner tried to establish that paramedics have no interaction with Trinitas staff in other departments. To that extent, the Union entered a Trinitas policy which stated

Paramedics play no role in the day to day operations of the emergency department other than delivering patients to the emergency department staff.

P. Ex. 1. However, the Petitioner’s own witness *supported* the detailed description of Department employees with emergency room employees. Paramedic George Ketterer testified

⁷ Even the Union admitted that all other Department services were dispatched by Trinitas. U. Req. 2.

that, when bringing a patient to the emergency room, he registers the patient, gives report to the charge nurse, brings the patient to the assigned room, and meets with another nurse to give a more detailed report. Tr. at 185-186.⁸

In addition, the Union contended that the charting of patients used by Pre-Hospital employees differs in format from those used elsewhere at Trinitas. U. Req. at 3. It was also argued that some of the equipment used by Pre-Hospital employees, while similar in function and use, is not necessarily the exact same equipment as that utilized within the four walls of the Hospital. U. Req. at 3. Local 5000 also asserted that Department employees do not wear the same uniforms as other Trinitas employees. U. Req. 5.

The Union's Request for Review cites no caselaw support for its position. At the hearing, Petitioner cited HealthEast Care System, Case 18-RC-142171 (January 2, 2015), alleging the Regional Director's there decision supported its position in Trinitas. However, as stated by the Regional Director here, this case "is readily distinguishable from the instant matter." Decision at 11. Among the significant differences found by the Regional Director below:

- HealthEast operated a multi-county health care system with three hospitals, a long-term care center, skilled nursing facilities, 15 medical clinics, and the ambulance service containing the putative unit.
- Most transportation provided was to other health care institutions
- The ambulance service had been operating since 1910 as a separate entity.
- It had its own billing system.

⁸ The Union argues there is no transfer of employees to the Pre-Hospital Services Department from other areas of Trinitas. U. Req. at 3. Notably, this is a community of interest factor which is not relevant to the Acute Care Facility Bargaining Unit rules, but was also contradicted by the testimony of Petitioner's witness Richard Tomshaw, who testified to just such an employee who worked in both the Pre-Hospital Department and in the emergency room. Tr. at 182.

Decision at 11-12.⁹ The Regional Director in this case correctly found guidance in the Board's decision in Virtua Health, Inc., 344 NLRB 604 (2005) in which a unit limited to paramedics was found inappropriate under § 103.30. The facts of Virtua Health are largely similar to those in the case at bar – however the facts at Trinitas are even more compelling as the unit is not limited to paramedics, but also EMTs and Registered Nurses.

CONCLUSION

The Petitioner herein has failed to establish any basis for granting a request for review. The Regional Director in this case found that the Pre-Hospital Services Department was not a separate entity and thus was covered by the Board's bargaining unit rule. This was amply justified by these uncontroverted facts:

- The services provided to Trinitas established the complete functional integration of the Department with the Hospital; without these services, the Hospital would not be able to timely serve its patients
- The Department services provided revenue to the Hospital; billing was integrated with the Hospital's billing
- The Department is integrated within the corporate structure of the Hospital.
- The Department is licensed as part of the Hospital; it cannot be licensed independently of the Hospital

The Petitioner can show no error of fact. The sole matters raised by the Union here are minor facts (uniforms, limits of transfer, degree of similarity of work and equipment, limited difference in dispatch) and in no way establish that the Pre-Hospital Services Department exists as a separate entity. At most, they amount to an unconvincing argument against a finding of community of interest between the Department and other employees of the Hospital – an argument which is irrelevant in light of the unit rule of § 103.30.

⁹ In addition, the ambulance service in HealthEast had its own HR department.

For the reasons stated above, the Board should deny the Request for Review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2017 copies of the foregoing Employer's Opposition to the Request for Review were electronically filed with the National Labor Relations Board and served via e-mail upon:

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